Supreme Court, U.S.
FILED

NO. 02-1439 MAR 27 2003

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In The

Supreme Court of the United States

MARTA A. LENTINO,

Petitioner,

v.

LOWELL T. CAGE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS STATED

QUESTION 1.

WHETHER THE DISTRICT COURT EXCEEDED ITS JURISDICTION IN VIOLATION OF THE ANTI-INJUNCTION ACT 28 U.S.C. § 2283 WHEN IT ENJOINED ONGOING NON-BANKRUPTCY ESTATE COURT LITIGATION BETWEEN NON-DEBTORS AFTER SUBSTANTIVELY AMENDING A JUDGMENT ON TITLE THAT HAS BEEN FINAL FOR FOUR YEARS HAVING ABSTAINED AND REMANDED THE REMOVED PARENT CASE BACK TO THE STATE COURT?

QUESTION 2.

WHETHER THE DISTRICT COURT EXCEEDED ITS JURISDICTION AND INVALIDATED CONGRESS' EXPRESS PROHIBITION OF THE ANTI-INJUNCTION ACT 28 U.S.C. § 2283 WHEN IT ENJOINED ONGOING NON-BANKRUPTCY STATE COURT LITIGATION BETWEEN NON DEBTORS AFTER SUBSTANTIVELY AMENDING A JUDGMENT ON TITLE TO ASSETS ALMOST FOUR YEARS AFTER IT ISSUED A JUDGMENT ON TITLE OF ASSETS PARTLY OWNED BY NON-DEBTORS WHO WERE NOT PARTIES TO PROCEEDINGS IN THE DISTRICT COURT?

QUESTION 3.

WHETHER THE DISTRICT COURT EXCEEDED ITS JURISDICTION IN VIOLATION OF *DUE PROCESS* AND RIGHTS OF NON DEBTORS PARTIES WHO WERE NOT PARTIES TO PROCEEDINGS IN THE DISTRICT COURT WHEN IT ADJUDICATED "SUA

QUESTIONS STATED – Continued

SPONTE" THEIR RIGHTS BY A SUBSTANTIVELY AMENDED ORDER ON TITLE BASED ON EX-PARTE LETTER OF STATE COURT DEFENDANT'S COUNSEL TO TRUSTEE ABSENT NOTICE, PLEADINGS AND EVIDENCE?

QUESTION 4.

WHETHER TITLE TO PROPERTY IRREVOCABLY ABANDONED BY A BANKRUPTCY TRUSTEE CAN BE ADJUDICATED AS BELONGING TO THE BANKRUPTCY ESTATES BY AN AMENDED ORDER ON TITLE SIX YEARS AFTER IT WAS ABANDONED CONFLICTED WITH THIS COURT'S DECISIONS IN *BROWN V. O'KEEFE*, 300 U.S. 598, 57 S. CT. 543 (1937); *IN RE DEWSNUP*, 908 F.2D 588 (10TH CIR. 1990), *CERT. GRANTED*, 498 U.S. 1081, 111 S. CT. 949 (1991), *AFF'D*, 502 U.S. 410, 112 S. CT. 773 (1992); VIOLATED *DUE PROCESS* AND AMOUNTED TO BOTH BAD POLICY AND BAD LAW?

LIST OF PARTIES

Parties to the Case:

1. Appellant Susana Raquel Shafer, non debtor Plaintiff/ Counterdefendant in non-bankruptcy state court proceedings.

2. Appellant Fabiola Vanesa Lentino, non debtor Plaintiff/Counterdefendant in non-bankruptcy state court proceedings.

3. Appellant Michelle Marie Lentino, non debtor Plaintiff/Counterdefendant in non-bankruptcy state court proceedings.

4. Appellant Natalia Lentino, non debtor Plaintiff/ Counterdefendant in non-bankruptcy state court proceedings.

5. Appellant Cynthia Victoria Lentino, non debtor Plaintiff/Counterdefendant in non-bankruptcy state court proceedings.

6. Appellant Marta A. Lentino, non debtor Plaintiff/ Counterdefendant in non-bankruptcy state court proceedings, in her individual capacity and in her capacity as Trustee of the Eduardo P. Lentino Children's Trust.

7. Appellant Maria Raquel Lentino, non debtor Plaintiff/Counterdefendant in non-bankruptcy state court proceedings.

8. Appellant The Eduardo P. Lentino Children's Trust non debtor Plaintiff/Counterdefendant in non-bankruptcy state court proceedings.

LIST OF PARTIES – Continued

9. Dov Avni Kaminetzky, non debtor Intervenor in non-bankruptcy state court proceedings involving claims for unpaid professional services to non debtor parties.

10. Frost National Bank f/k/a Cullen Center Bank & Trust Defendant/Counterplaintiff in non-bankruptcy state court proceedings.

Counsel in the Case:

11. Ms. Cynthia T. Sheppard, Attorney at Law, P.O. Box 67, Cuero, Texas 77954, Attorney for Appellants Susana Raquel Shafer, Fabiola Vanesa Lentino, Michelle Marie Lentino, Natalia Lentino, Cynthia Victoria Lentino, Marta A. Lentino, Maria Raquel Lentino and The Eduardo P. Lentino Children's Trust.

12. Mrs. Theresa Mobley, Cage, Hill & Niehaus L.L.P. 5851 San Felipe, Suite 950, Houston, Texas 77057 Attorney for Lowell T. Cage, Chapter 7 Trustee of the bankruptcy estates of Eduardo and Jorge Lentino.

13. Richard T. Howell, Jr., Buckley, Mathews, White & Howell L.L.P., 2401 Fountainview Suite 1000, Houston, Texas 77057. Attorney for Defendant/Counterplaintiff Frost National Bank, f/k/a Cullen Center Bank & Trust, creditor of Eduardo & Jorge Lentino and non-bankruptcy state court defendant/Counterplaintiff in Case no. 1999-09390.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Marta A. Lentino respectfully requests that the Court grant the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ORDERS BELOW

Petitioner's Appendices provide the pertinent Orders.

JURISDICTION

The court of appeals' judgment was entered on November 13, 2002. A timely petition for rehearing was denied on December 27, 2002 (App., *infra* App. 1, 35). Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution provides in relevant part: "[T]he Laws of the United States * * * shall be the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. Art. VI, cl.2. Petitioner's Appendices provide the pertinent Sections of the United States Code and Statutory Provisions Involved.

STATEMENT OF THE CASE

This case raises fundamental and important recurring questions of jurisdiction relating to District Court's power to stay ongoing state court proceedings of non debtor parties six years after remand of removed parent state court case to state court exercising abstention. The meaning of this Court's decision in *Mitchum v. Foster*, 407 U.S. 225, 92 S. Ct. 2151 (1972) and the validity efforts by district courts to circumvent Congress' express prohibition of 28 U.S.C. § 2283. "The Anti-Injunction Act", absent exceptions contemplated by the Act. It also addresses the propriety of District Courts to adjudicate "*sua sponte*" rights of non debtor parties who were pursuing *In Personam* tort action in state court for over two years and were never in front of the District Court absent pleadings or motions requesting such relief. Moreover, it addresses the lack of jurisdictional basis of District Court to have substantively amended a judgment that had been final for four years.

The first conflict arises with the Anti-Injunction Act itself which states "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction." 28 U.S.C. § 2283 (1994). There are four exceptions (i) as expressly authorized by Act of Congress; (ii) where necessary in aid of the court's jurisdiction; (iii) to protect or effectuate the court's judgments; and (iv) adequate showing of "irreparable injury". None of the exceptions apply to the case *sub judice*, and presents a direct conflict with this Court's holding in *Mitchum*, an intracircuit conflict with prior decisions of the Fifth Circuit in *Farias v. Bexar County Bd. Of Trustees for Mental Health & Mental Retardation Svcs.*,

925 F.2d 866 (5th Cir. 1991) and *Texas Commerce Bank Nat'l Ass'n v. Florida*, 138 F.3d 179 (5th Cir. 1998), because it precludes claims of non debtor parties against a non debtor party that obviously were not litigated as part of the bankruptcy proceedings.

The second conflict concerns an even more fundamental question – the proper boundaries for District Courts in the exercise of bankruptcy related jurisdiction over non-bankruptcy related state court litigation between non-debtors previously found by same district court not to be subject to automatic stay provisions of 11 U.S.C. § 362(a) and remanded to state court from where it was removed pursuant to 28 U.S.C. § 1452(b). The departure from jurisdictional boundaries outlined in the remand statutes is amplified in this case by the lapse of time, over six years, between the original remand after exercising abstention in committee with state court and the subsequent intervention by the district court just two-weeks prior to the scheduled state court case trial, based on ex-parte letter of state court defendant Frost Bank sent to the Trustee who in turn sent it to the court. The district court allowed state court appeals to go forward, exercised abstention in committee with state courts, remanded removed state court case to state court and lifted automatic stay provision of 11 U.S.C. § 362(a) allowing litigation to proceed in state court forum. This case addresses the validity of actions by district courts to circumvent this court's decision in *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 116 S. Ct. 1712 (1996).

The third conflict entails the district court "*sua sponte*" adjudication of rights of non debtor parties that were asserting their claims in state court for over two years and were never in front of the District Court absent

pleadings or motions requesting such relief, on account of a letter written by state court defendant's counsel for Frost National Bank sent to the bankruptcy trustee who in turn tendered to the district court and the validity efforts by district courts and litigants to circumvent *Due Process*, and standards of procedure and evidence. It created a direct conflict with this Court's holding in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15, 70 S. Ct. 652, 657-58 (1950), an intracircuit conflict with a Fifth Circuit prior decision in *Olabisiomotosho v. City of Houston*, 185 F.3d 521 (5th Cir. 1999) calling for statutory construction of FED. R. EVID. 603.

The fourth conflict entails the jurisdictional basis of the district court to substantively amend a judgment that has been final for four years and involves an important question of statutory construction, FED. R. CIV. P. 59(e) and presents an intracircuit conflict with the Fifth Circuit holding in *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 143 (5th Cir. 1996).

The fifth conflict encompass the propriety of a district court to adjudicate title to property as belonging to the bankruptcy estate that had been irrevocably abandoned by the Trustee six years prior to its re-adjudication by way of an amended judgment and the validity by the district court to circumvent and depart from this Court's holdings in *Brown v. O'Keefe*, 300 U.S. 598, 57 S. Ct. 543 (1937) and *In re Dewsnup*, 908 F.2d 588 (10th Cir. 1990), *cert. granted*, 498 U.S. 1081, 111 S. Ct. 949 (1991), *aff'd*, 502 U.S. 410, 112 S. Ct. 773 (1992) and the intracircuit conflict it created with the Fifth Circuit's prior decision in *In re Killebrew*, 888 F.2d 1516, 1520 (5th Cir. 1989).

A. The State Court Litigation

1. The District Court Stay of Ongoing State Court Proceedings And The Injunction of Non-Debtors State Court Parties

State Court Case No. 1999-09390 styled Susana Raquel Shafer, Fabiola Vanesa Lentino, Michelle Marie Lentino, Natalia Lentino, Cynthia Victoria Lentino, Marta A. Lentino, Maria Raquel Lentino and the Eduardo P. Lentino Childrens Trust, Plaintiffs v. Frost National Bank, f/k/a Cullen Center Bank & Trust, Defendant was filed on February 22, 1999 in the 281st Judicial District Court of Harris County, Texas for common law fraud and misrepresentation, equitable actions, malicious prosecution, abuse of process and other wrongful acts committed by the institution [7CR6392-98]. The Lentino Children were never before the district court and were never joined in any proceeding in the bankruptcy court nor district court or state court. Their fathers Eduardo and Jorge were not parties to the state court action. Susana Raquel Shafer and Cynthia Victoria Lentino are Jorge Lentino's children and the vested remainder beneficiaries of the J.L. York Plaza Living trust established by their father in 1986. Fabiola Vanesa Lentino, Michelle Marie Lentino and Natalia Lentino are the direct beneficiaries of the Eduardo P. Lentino Children's Trust, an irrevocable trust created under the laws of the State of Texas, on October 15, 1986 [3Supp.CR.11, 1CR8360-73] and the vested remainder beneficiaries of the E. L. York Plaza Living Trust. Marta A. Lentino is the duly appointed Trustee since 1986 of the Eduardo P. Lentino Children's Trust [1CR8360-73]. The state court case 99-09390 underwent two years of court-ordered discovery and it was set for preferential jury trial

on June 19, 2001 [App. 7]. This case is a derivative case from Case no. 91-18878 that was remanded back to the state court on January 25, 1995 [App. 4][1] at the request of

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[1] During the early eighties Cullen Center Bank & Trust a state banking association of Houston, Texas engaged in high risk lending multi-million dollar loans, far in excess of its stated capital and retained surplus, made in violation of Texas banking laws, in the areas of oil and gas, real estate and short term commercial loans and in the covert financing of denovo national banking associations located in Texas, owned operated and controlled by its own insiders among them Petrobank N.A. which failed in June 1986. Initially Cullen Bank's loans to the control groups were without recourse and secured by the startup bank's capital stock. When the Texas economy cratered in 1984 due to collapse of oil & gas prices, over-development or reckless high leveraged lending Cullen intimidated and coerced its borrowers to convert their non-recourse loans to personally guaranteed loans and to take on other borrower's debts. Eduardo and Jorge were small investors of Petrobank holding in little over 5% of stock, an investment of $150,000 each. The purchase of stock in 1982 was to be completely financed on a non-recourse basis, by Cullen Center Bank. A year after its initial lending the loans were renewed for another year. During 1984 however, many of Cullen's overleveraged borrowers mostly real estate developers and oil and gas investors and operators defaulted and Cullen was facing its own default. To solve the dire situation it threatened non-insider borrowers including Eduardo and Jorge to assume the debts of others in order to renew the loans. The total liability of Eduardo and Jorge jumped from $150,000 to $2,252,250 without any additional consideration. However Cullen made this note for one-year-only to mature on November 30, 1985. On said date Cullen's counsel demanded payment in full in five days on the almost $2 million due on the note that had rolled the debts of others. Eduardo and Jorge could not pay. Cullen Bank interfered in Petrobank's business and Petrobank sued Cullen in 1986 under Case 86-05630, Cullen in return sued all shareholders of Petrobank and the cases were eventually consolidated under cause no. 86-05630. No final adjudication as to the debt of others was ever made in this case. However Cullen continued collection proceedings against several Petrobank shareholders without posting in its books the amounts of judgments it obtained against others. Eduardo and Jorge entered into compromise settlement agreements with Cullen in 1987 however Cullen brought the usury of third-party debt into the compromise by requiring

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the Lentino brothers to be responsible for the balance of their own debt and that of others. Eduardo and Jorge subsequently defaulted and in 1990 Cullen obtained liquidated judgments against Jorge and Eduardo under Cases no. 90-14518 and 90-29724. By the end of 1990 Cullen had already recovered all the monies it had advanced by way of judgments it obtained against third parties, however it continued to assert that almost two-million dollars was still owed to the institution. Marta was not a party to any of the lawsuits Cullen instituted against her husband Eduardo up to 1991 when she was sued for the first time.

On May 3, 1991 Cullen Center Bank & Trust a state banking association sued Eduardo, Jorge and Marta Lentino together with approximately twenty-two other entities including the E.L. and J.L. York Plaza Living Trusts and the Eduardo P. Lentino Children's Trust, in the 269th JDC of Harris County, Texas under Case no. 91-18878 seeking to enforce a compromise settlement agreement it executed with Eduardo and Jorge in 1987 that obligated Eduardo and Jorge to be responsible for third-party debt without consideration. Prior to proceeding to trial Cullen Bank non-suited all entities including the E. L. York Plaza Living Trust, the E.L. York Plaza Living Trust and the Eduardo P. Lentino Children's Trust. Through misrepresentation and concealment of material facts Cullen obtained in 1993 a judgment against Eduardo and Jorge but not against Marta. The ruinous judgment rendered Eduardo and Jorge insolvents and they filed for personal bankruptcies on August 24, 1994 under Chapter 7 in the Bankruptcy Court for the Southern District of Texas. Lowell T. Cage was appointed their Trustee. On August 30, 1994 Debtor Eduardo Lentino removed the state court case no. 91-18878 to District Court and was assigned Civil Action H 94-3007 in Judge Lynn Hughes court. Subsequently Cullen Bank moved the district court to remand to the state court and to exercise mandatory abstention in comity with state courts as its claims were state court claims. On January 25, 1995 the district court remanded the case to state court [App. 4]. At the time of filing bankruptcy an appeal was filed with the 14th Court of Appeals at Houston seeking reversal of the inflated usurious judgment. The Bankruptcy Court allowed the Chapter 7 Trustee to go forward with the state appeal [Case no. 94-45735 Dkt. 104]. On February 29, 1996 the 14th Court of Appeals at Houston reversed the judgment indicating usury was committed in the transactions that had not been purged. The Supreme Court of Texas affirmed the judgment of the Court of Appeals on February 21, 1997 and remanded for a new trial on the merits. On

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May 13, 1998 the district court lifted the stay allowing the state court litigation to proceed to trial [17CR3371; App. 6].

During the discovery stage of state court case no. 99-09390 prior to the first scheduled jury trial in the state court the district court issued an order of preclusion requiring Marta to request permission prior to filing any paper in any court with regards to parties that have been involved in the bankruptcy proceedings. [3CR7634] Thus Marta who was under orders of the state court even though the state court action was against Frost Bank and was pursuing an *In Personam* action for fraud committed on her and damages suffered as a result of misrepresentation and concealment, moved the district court to issue an order authorizing Marta to proceed with the state court ordered discovery and to attend the scheduled trial. The district court issued its order granting Marta's motions [3CR7742, 7783, 7784]. On February 22, 2000 Case no. 91-18878 which was reversed and remanded by the Supreme Court of Texas was called to trial. Lowell T. Cage Trustee was pursuing an usury counterclaim against Cullen Bank for over 20 million dollars and had substituted Eduardo and Jorge as parties in the case by appellate court order [App. 6]. Marta had several pending dispositive motions on the morning of trial since she was not a party signatory to any transactions with Cullen Bank nor Frost and the jury during the 1993 trial of Case no. 91-18878 did not assess any damages against her; moreover, the bank had made a stipulation in open court that Marta was not liable on anything. The trial court refused to rule on the motions and Marta had to default for cause being previously precluded from asserting her defenses by the district court. [*See In re Marta A. Lentino* Case No. 98-621 App. 20 filed with this Court]. Straining credulity Frost obtained through concealment and misrepresentation of material facts a $5 million dollar judgment against Marta on February 29, 2000 and the court severed the main Case no. 91-18878 creating a 91-18878A case, thus severing the claims of the bank and the trustee from the claims of the bank against Eduardo, Jorge and Marta [App. 28] and ordering that the state court judgment was to have "no effect" on the bankruptcy estates of Eduardo and Jorge [App. 28-32]. Because Marta had secured permission by way of a court order from the district Court to proceed against Frost National Bank in Case no. 99-09390, the district court ordered Marta to "act promptly, completely and cheerfully" [App. 8; 3CR7784] Marta now had additional discovery from the testimony rendered at the February 22, 2000 trial. Marta continued to obtain deposition testimony from bank officers and discovery up to thirty-days-prior to the scheduled preferential trial setting on June 19,

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Cullen Bank who moved the district court to exercise abstention in committee with state courts and asserting that its claims were state claims. On April 17, 2001, just about a little over two weeks prior to the preferential trial setting, Frost Bank sought refuge in the district court in order to avoid going to trial and wrote a letter to the Chapter 7 Trustee [App. 9] who in turn turned to the district court who then compelled all parties to the state court action to appear for a Rule 16 conference stating that

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2001. By way of newly obtained discovery Marta conclusively established that the $5 million dollar judgment obtained by Frost National Bank on February 29, 2000 was fraudulent with regards to the existence of any debt that had been asserted against her husband and Frost misrepresented the recovery it had obtained and the non finality of prior litigation under Case no. 86-05630 that was initiated by Petrobank N.A. against Cullen Bank and subsequently consolidated with Cullen's claims against Eduardo and Jorge and approximately forty-other shareholders of Petrobank N.A.; with regards to its standing as alleged successor by merger to Cullen Bank, with regards to its prior concealed knowledge of transfer of assets which it now admitted under oath it had known all along, however it obtained relief on misrepresentation to trial and appellate courts in February 2000. The state court judge that presided over the state court case no. 91-18878 is the same trial Judge that presided over Case no. 1999-09390 and had for the first time an opportunity to review her prior rulings and was now changing her mind and ordering the bank to produce its witnesses and merger documents. Mr. Kaminetzky who was a former trustee of the E.L. and J.L. York Plaza Living Trusts had intervened claiming service fees and fraudulent attorney fees asserted against him. The United States Office of the Comptroller of the Currency had granted production of documents after Frost resisted to produce same even though it was court-ordered to do so the production depicts a lack of consummation of merger between Cullen & Frost. Thus, Marta's claims for the torts Frost Bank committed on her after her claims had been severed from those of trustee should continue to proceed in state court where Frost obtained the fraudulent judgment against her on February 29, 2000 and as the judgment states is to have no effect on the bankruptcy estates [App. 28-32].

the court "would decide motions, narrow issues, inquire about expected motions, and schedule discovery." [2CR8107, App. 33]. The only matters before the court were post-discharge motions for attorney's fees and administrative matters. No motion or pleading of any kind was on file regarding the state court action and whereupon absent pleadings or motions or notice of any readjudication request, on the say-so of attorney for Frost Bank who was not even sworn, thus absent any evidence, as none was introduced, the orders which are the subject of review were entered. App. 9, 13, 19. **The letter requested "if you could have Judge Hughes amend the judgment on title or clarify the judgment on title to state that any assets in the self-settled discretionary trusts always belonged to Eduardo and Jorge Lentino, we could end more needless litigation." [App. 9]. On March 12, 2001 the district court denied the request to vacate the judgment and to enter any findings of fact and conclusions of law** [97-498-CV Dokt 462, 465; 1CR8507].

On May 9 and 10, 2000 the district court discharged Eduardo and Jorge from their Chapter 7 bankruptcies (4CR7605, 7607). One year after the discharge the district court entered a preclusion order bringing an ongoing state litigation to a halt in the complete absence of pleadings, notice, or evidence. The most fundamental rules of procedure as to finality of judgments pleading and proof, prohibit such a result. This court should exercise the supervisory power of clarification with respect to FED. R. EVID. 603 as to the required standards to construe evidence. Clearly there is a departure by the courts below from the procedure normally followed in addressing statutory requirements and constitutional questions.

B. The Substantive Amendment to the Judgment on Title that had been Final for Four Years

On June 16, 1997 the district court entered a judgment on Title [App. 16] which was appealed to the fifth Circuit and affirmed; a subsequent Petition for Writ of Certiorari was filed in this Court on February 1999 under Case no. 98-1380, and was denied, and a timely motion for rehearing was also denied. Petitioner respectfully requests that this honorable Court take judicial notice of the prior case 98-1380 filed in this Court. Although some seventeen entities are listed in this final judgment, neither the Eduardo P. Lentino Children's Trust, the assets listed in the later Amended Judgment [App. 13] or any of the Lentino children are named in the judgment. The original judgment goes on to list which of the listed entities vested in Pro Care of Houston LLC on January 14, 1997 when the trustee executed and delivered a special warranty deed and bill of sale. Petitioners argued to the Fifth Circuit that after the judgment became final the district court lost jurisdiction to substantively amend a final judgment after four years. The judgment was impervious to change and because it was entered without jurisdiction it was void, relying on FED. R. CIV. P. 59(e) and the cases which interpreted the rule *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 143 (5th Cir. 1996); *United States Leather, Inc. v. H & W P'ship*, 60 F.3d 222, 225 (5th Cir. 1995). Any power the district court had to substantively amend the judgment ended ten days after June 16, 1997, on June 26, 1997. The Judgment also suffered from the same deficiencies as the second order [App. 19]; it was entered in the complete absence of any pleadings, notice, or evidentiary hearing. For these reasons it must be set aside. The orders are void on many levels each of which independently

deprived Petitioner's basic *due process*. To disregard fundamental rules of how issues and claims are presented for adjudication violates a litigant's right to full and proper notice of the claims against it. Because it did not comport with basic due process and the rule of procedure the district court orders are void. *New York Life*, 84 F.3d at 143. **Clearly a party cannot put an issue into play simply by writing a letter to the Trustee**. *Hogard v. Hogard (In re Hogard)*, 43 B.R. 590, 593 n.3 (Bankr. D. Minn. 1984). The district court decision conflicted with the requirements outlined by this Court in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15, 70 S. Ct. 652, 657-58 (1950). If an issue was never pled, it could not have been the subject of any substantial proof, or briefing or argument and cannot support the decision *Hong Kong Supermarket v. Kizer*, 830 F.2d 1078, 1080, n.1 (9th Cir. 1987). Without any evidence there was no way the District Court could for instance determine the exact nature of Petitioner's claims in state court or of what the Children's Trust was composed of. All it was before the district court was the unsworn statement of counsel which was not evidence. FED. R. EVID. 603; *Olabisiomotosho v. City of Houston*, 185 F.3d 521 (5th Cir. 1999). In light of the meaning and purpose of pleadings in defining a lawsuit and the due process protection that such procedural mechanisms provide, the orders of the district court strain credulity and shake the conscience as blatant violations of such protections. *Nowicki v. United States*, 536 F.2d 1171, 1174-75 (7th Cir. 1976). Both procedural and substantive due process defeat the Amended Judgment on Title and order entered by the district court on June 14, 2001, four years after the original Judgment in Title became final, the district court amended it, changing its substance in the absence of any jurisdiction or power to do so.

C. The Irrevocable Abandonment of Property By the Chapter 7 Trustee and Its Acknowledgment by the Bankruptcy Court

On May 1st, 1995 Trustee Notified the creditors of its intention to Abandon property citing therein 11 U.S.C. § 554(a) as being of inconsequential value to the estates [App. 20]. No creditor objected and the property was abandoned. The bankruptcy court acknowledged the abandonment [3Supp.CR.91]. The property which vested in the Eduardo P. Lentino Children's trust was listed in Debtor's schedule because it had been seized by Cullen Bank on turnover proceedings back in 1993 when it had obtained its judgment as discussed above under the state court litigation history [3Supp.CR.11, 19]; subsequently that judgment was reversed by the Supreme Court of Texas as indicated above. Marta the duly appointed trustee of the Children's Trust [3Supp.CR.11, 1CR8360-73), requested clarification from the Trustee and a letter dated May 11, 1995 was received explaining the effects of its abandonment [App. 24]. The Bankruptcy court further acknowledged Trustee's abandonment in its own memorandum [3Supp.CR.91]. The contrary decision of the district court to amend a judgment on title after four years and include as property administered by the estates two properties of the Children Trust that had been irrevocably abandoned by the Trustee in 1995 eviscerates the **very purpose of Abandonment which is to revert the property to Debtor as if "no petition for bankruptcy had been filed"**. The district court's action is a clear departure from well-established law and creates an irreconcilable conflict with well-established precedents dictated by this court. *In re Dewsnup*, 908 F.2d 588 (10th Cir. 1990), *cert. granted*, 498 U.S. 1081, 111 S. Ct. 949 (1991), *aff'd*, 502 U.S. 410, 112 S. Ct. 773 (1992), *Brown v. O'Keefe*, 300 U.S. 598, 57

S. Ct. 543 (1937), besides the additional deficiencies of the order entered in the absence of pleadings and evidence.

D. The Court of Appeals' Decision

The panel did not see fit to address the legal issues presented in this case as can be observed from the order it entered [App.1] no opinion containing legal arguments supporting the court's rationale to uphold and "affirm" the district court orders were laid [App. 1]. Appellant's request to take judicial notice of undisputable facts and documents on record with the court was ignored and Justice Edith Jones who controlled the argument commenced to tremble noticeably as she spoke and resorted to repeatedly express her view "That this has to stop," overlooking that the very same orders from which appeal is taken contemplated the right to appellate review [App. 19]. Trustee in its response to Petitioner's motion for rehearing conceded that Abandonment of property had taken place but misrepresented to the Fifth Circuit that Petitioners would have the court believed that the state court case had being ongoing for two years when in fact the record affirmatively supports that the case was filed on February 22, 1999 (7CR6392-98) and was set for preferential jury trial on June 19, 2001 [App. 7]. The decision also places a warning notice by stating that Appellants should be aware of the finality of the judgment when it was the Circuit itself who condoned a substantive amendment of a final judgment after four years and as held previously by this court orders entered by a court that lacks jurisdiction are void *Burnham v. Superior Court of California*, 110 S. Ct. 2105, 2106 n.1 (1990). The Circuit's clear departure from this Court's well-established precedent, the procedure normally followed in addressing statutory and constitutional issues

depicts that important questions of law and procedure had been erroneously decided. The judicial supervision of this Court is necessary to establish and maintain the standards of procedure and evidence.

REASONS FOR GRANTING THE PETITION

(i) The Direct Conflict between Decision of Court of Appeals and of Supreme Court

(ii) The Conflicts Between Decision of Court of Appeals and Other Circuits on Important Questions of Law and Procedure

(iii) The Intracircuit Conflicts between Decisions of Court of Appeals on Important Questions of Law and Procedure

A direct conflict between the decision of the court of appeals from which review is being sought and the decision of the Supreme Court exists (1) this Court's decision in *Mitchum v. Foster*, 407 U.S. 225, 92 S. Ct. 2151 (1972), holding that 28 U.S.C. § 2283 places an absolute ban on issuance of a federal injunction against a pending state court proceeding in absence of one of recognized exceptions that are not present in the *case sub judice* as the district court had exercised mandatory abstention in the parent state court litigation, had remanded the removed state court case to the state court and none of the parties to the state court proceedings filed for bankruptcy nor have they been joined in any proceedings in the bankruptcy court. The decision also creates an intracircuit conflict with Fifth

Circuit's prior holdings in *Texas Commerce Bank Nat'l Ass'n v. Florida*, 138 F.3d 179 (5th Cir. 1998); *Farias v. Bexar County Bd. Of Trustees for Mental Health and Mental Retardation Svcs.*, 925 F.2d 866 (5th Cir. 1991). It also presents an important question of jurisdictional conflict between state court and federal court since the district court invalidated an order to preferential trial setting by jury in the state court on an over two-years old ongoing proceedings [App. 7]. This Court exercise of supervisory power in cases involving federal jurisdiction, practice and procedure reflects that responsibility and it is appropriate to grant certiorari because the appellate decision has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power. The jurisdictional issue is of utmost importance and likely to recur. (2) The construction of Federal Rules of Civil procedure is of utmost importance. This case presents the construction of FED. R. CIV. P. 59(e) which limits substantive changes to orders entered by federal courts to ten days after entrance of the order. In this case the Circuit court has condoned substantive changes to a final judgment after four years absent pleadings requesting such relief. The standards as to what constitutes evidence in a civil case is an important question requiring the construction of FED. R. EVID. 603, and the judicial supervision of this Court encompasses the establishment and maintenance of the standards of procedure and evidence. (3) The construction of Abandonment of property of the estate within the context of bankruptcy under Section 554(a) of Title 11 of the U.S.C. involves an important question of statutory construction as the situation is likely to recur and the appellate court decision is in direct conflict with this court's decisions in

Brown v. O'Keefe, 300 U.S. 598, 57 S. Ct. 543 (1937); *In re Dewsnup*, 908 F.2d 588 (10th Cir. 1990), *cert. granted*, 498 U.S. 1081, 111 S. Ct. 949 (1991), *aff'd*, 502 U.S. 410, 112 S. Ct. 773 (1992). This Court held property abandoned as burdensome to estate or of inconsequential value and benefit ceases to be part of a bankruptcy estate and reverts to debtor **and stands as if no petition were filed.** (emphasis added) It also created a conflict with the Ninth Circuit decision in *Catalano v. C.I.R.*, 279 F.3d 682 (9th Cir. 2002), a recently decided holding that abandonment means relinquishment of the property at issue from the estate and debtor's interest is restored *nunc pro tunc* as of the filing of the bankruptcy petition; other courts joined in this view considering the abandonment by trustee to debtor as a matter of law and debtor may seek any remedy available under state law. *In re Bouldin*, 196 B.R. 202 (Bankr. N.D. Ga. 1996); the decision also created an intracircuit conflict with a prior decision of the Fifth Circuit *In re Killebrew,* 888 F.2d 1516, 1520 (5th Cir. 1989). Likewise, the causes of action revert to Debtor. *Bryson v. Bank of New York,* 584 F. Supp. 1306 (S.D.N.Y. 1984); *Rashid v. Kite,* 934 F. Supp. 144 (E.D. Pa. 1996). The appellate court upheld contrary to this court well-established precedent and that of other Courts. (4) The "*sua sponte*" adjudication of rights of parties that were never in front of the bankruptcy court or district court and were never joined in any bankruptcy proceeding and were parties to a state court action without pleadings or motion on file in district court presents a direct conflict with the constitutional guarantee of due process as the district court action is totally devoid of jurisdiction and evidentiary support.

I. The Decision Below Is Incorrect

A. The Court Below erred in upholding that an ongoing two-year-old state court proceeding can be brought to a halt and Invalidate A State Court Order Setting Preferential Jury Trial

B. The Court Below erred in Enjoining non-Debtors parties to state court proceedings just two weeks prior to the ordered preferential trial setting

Because the ongoing state court litigation under Case no. 1999-09390 was over two-years old [7CR6392-98] underwent almost two years of discovery, various dispositive motions and was court-ordered set for preferential jury trial on June 19, 2001 [App. 7], was among non debtor parties litigating non bankruptcy matters and the Original Judgment on Title entered by the District court on June 16, 1997 [App. 16] did not include any of the Lentino children nor the Eduardo P. Lentino Children's Trust or two of its properties that had been irrevocably abandoned by the trustee [App. 20, 24, 3Supp.CR.91] nor included Marta whose name in the caption of the order of Title of 1997 was mandated to be removed by the Fifth Circuit in a Per Curiam opinion [App. 27] and the related case No. 91-18878 had been remanded by the very same district court back to state court in 1995 exercising abstention and committee with state courts [App. 4]. Furthermore Case No. 91-18878 was severed on Feb. 29, 2000 [App. 28, 31, 32] and the terms of judgment in severed case contain language that: "the terms of this judgment in severed cause 91-18878A shall have any effect whatsoever upon the bankruptcy estates of Eduardo P. Lentino or Jorge A. Lentino, M.D." The district court could not possibly justify

that the "Amended Judgment on Title" four years later based on a letter from counsel of state-court defendant Frost Bank to the trustee who in turn turned to the district court, [App. 9] was in aid of its jurisdiction nor to enforce its judgment thus making the Amended Judgment on Title in 2001 void as a matter or law for want of jurisdiction, departure from well-established standards of procedure and in direct conflict with 28 U.S.C. § 2283, this Court's precedent in *Mitchum v. Foster,* 407 U.S. 225, 92 S. Ct. 2151 (1972); *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314-15, 70 S. Ct. 652, 657-58 (1950) and other courts as clearly a party cannot put an issue into play simply by writing a letter to the Trustee. *See Hogard v. Hogard (In re Hogard)* 43 B.R. 590, 593 n.3 (Bankr. D. Minn. 1984). Moreover if an issue was never pled, it could not have been the subject of any substantial proof, or briefing or argument and cannot support a decision. *Hong Kong Supermarket v. Kizer,* 830 F.2d 1078, 1080 n.1 (9th Cir. 1987). Unsworn statements of counsel are not evidence. FED. R. EVID. 603; *Olabisiomotosho v. City of Houston,* 185 F.3d 521 (5th Cir. 1999).

C. The Court below erred in Substantively Amending a Judgment that had been Final for Four years

The final judgment on Title of June 16, 1997 [App. 16] was appealed to the Fifth Circuit and affirmed. A subsequent Petition for Writ of Certiorari to this Court and a timely motion for rehearing was denied under Case No. 98-1380. No substantive changes can be made to a judgment that has been final for four years affecting the rights of parties who were never in front of the district court. FED. R. CIV. P. 59(e); *New York Life Ins. Co. v. Brown,* 84

F.3d 137, 143 (5th Cir. 1996). It will take a sequespedelian stretch to believe that the district court only amended clerical errors; it only takes the naked eye to compare the orders of the district court side-by-side to note the substantive changes it made [App. 13, 16]. Because the district court has departed from the mandates of the Federal Rules of Procedure and departed from accepted course of judicial proceedings it calls for the supervisory powers of this Court as this case involves federal jurisdiction, practice and procedural issues. The most fundamental rules of procedure as to finality of judgments, pleading and proof prohibit the result reached by the court below. The order is void as a matter of law. *New York Life Ins. Co. v. Brown,* 84 F.3d 137 (5th Cir. 1996) ("A judgment is void if the court that rendered it lacked jurisdiction of the subject matter, of the parties, or if acted in a manner inconsistent with due process of law").

D. The Court below erred in Construing Unsworn Statement of Counsel as Evidence

The Amended Judgment on Title of 2001 [App. 13] was entered in the absence of pleadings, motions or evidence. It is well settled in the jurisprudence that unsworn statements of counsel are not evidence. FED. R. EVID. 603; *Olabisiomotosho v. City of Houston,* 185 F.3d 521 (5th Cir. 1999).

E. The Court below erred in Holding that a Bankruptcy Judge can "Clarify" a Four-Year-Old Judgment so as to Effectively Adjudicate Title to Property as Belonging to the Bankruptcy Estate that had been Irrevocably Abandoned by the Trustee

Neither the Eduardo P. Lentino Children's Trust or its assets were ever adjudicated by the bankruptcy court nor did the Trust itself file for bankruptcy protection. This is irrefutable and fully supported by the record [3Supp.Cr.11, 19]. To the extent the district court tried to adjudicate title back into the bankruptcy estates in 2001 of property that had been irrevocably abandoned by the Trustee in 1995 it created a direct conflict with this court's holding in *Brown v. O'Keefe,* 300 U.S. 598, 57 S. Ct. 543 (1937). Trustee's abandonment was irrevocable and bankruptcy court lost jurisdiction over abandoned assets and they stand as if no petition for bankruptcy has been filed, reverting *nunc pro tunc* to Debtor. *In re Dewsnup,* 908 F.2d 588 (10th Cir. 1990), *cert. granted,* 498 U.S. 1081, 111 S. Ct. 949 (1991), *aff'd,* 502 U.S. 410, 112 S. Ct. 773 (1992). It created an intracircuit conflict in the very same appellate court. *See In re Killebrew,* 888 F.2d 1516, 1520 (5th Cir. 1989). Also conflicts with other circuits decisions some recently rendered. *Catalano v. C.I.R.,* 279 F.3d 682 (9th Cir. 2002). It created uncertainty in a well-settled area of the law which is statutorily regulated. *See* 11 U.S.C. § 554(a). Trustee already admitted to the abandonment in its answer to Petitioner's motion for rehearing.

CONCLUSION

There are no legal or equitable doctrines or policy considerations which could justify the draconian results reached by the courts below in clear departure from the rules of law and the accepted and usual course of judicial proceedings. Petitioner has laid a predicate for the certworthiness of this case. The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARTA A. LENTINO
99 N. Post Oak Lane No. 1207
Houston, Texas 77024
(713) 956-6155
(713) 956-6434 (fax)

APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20781

(Filed Nov. 13, 2002)

IN THE MATTER OF: JORGE A. LENTINO, MD; EDUARDO P. LENTINO, MD,

Debtors,

SUSANA RAQUEL SHAFER, INDIVIDUALLY AND AS ASSIGNEE OF THE BENEFICIAL INTEREST OF THE INDIVIDUAL ESTATE OF GEORGE SALVADOR LENTINO; FABIOLA VANESA LENTINO; MICHELLE MARIE LENTINO; NATALIE LENTINO; CYNTHIA VICTORIA LENTINO; INDIVIDUALLY AND AS ASSIGNEE OF THE BENEFICIAL INTEREST OF THE INDIVIDUAL ESTATE OF GEORGE SALVADOR LENTINO; MARTA A. LENTINO, INDIVIDUALLY AND AS TRUSTEE OF THE EDUARDO P. LENTINO CHILDREN'S TRUST; THE EDUARDO P. LENTINO CHILDREN'S TRUST, AND MARIA RAQUEL LENTINO,

Appellants,

versus

LOWELL CAGE, TRUSTEE,

Appellee.

IN THE MATTER OF: EDUARDO P. LENTINO, M.D., ALSO KNOWN AS EDUARDO PEDRO LENTINO, ALSO KNOWN AS E. P. LENTINO; JORGE LENTINO, M.D., DEBTORS;

LOWELL T. CAGE, TRUSTEE,

Appellee,

versus

SUSANA RAQUEL SHAFER, INDIVIDUALLY AND AS ASSIGNEE OF THE BENEFICIAL INTEREST OF THE INDIVIDUAL ESTATE OF GEORGE SALVADOR LENTINO; FABIOLA VANESA LENTINO; MICHELLE MARIE LENTINO; NATALIE LENTINO; CYNTHIA VICTORIA LENTINO, INDIVIDUALLY AND AS ASSIGNEE OF THE BENEFICIAL INTEREST OF THE INDIVIDUAL ESTATE OF GEORGE SALVADOR LENTINO; MARTA LENTINO, INDIVIDUALLY AND AS TRUSTEE OF THE EDUARDO P. LENTINO CHILDREN'S TRUST; THE EDUARDO P. LENTINO CHILDREN'S TRUST, AND MARIA RAQUEL LENTINO,

Appellants.

Appeal from the United States District Court
for the Southern District of Texas
Civil Docket #H-97-CV-498

Before JONES, SMITH, and SILER,* Circuit Judges.

PER CURIAM:**

The court has carefully considered this appeal in light of the briefs, oral argument, and the tortured and litigious history of the underlying bankruptcy cases. Having done so, we find no reversible error of fact or law. The district court's "amended" judgment merely restated the disposition of the debtors' property interests from the beginning of the bankruptcies and the legal consequences flowing from that disposition in light of the court's title and preclusion orders. Moreover, appellants were well aware in advance of the scope and purpose of the court's hearing that preceded entry of the "amended" judgement.

Ms. Lentino and the other appellants and their confederates are placed on notice that any further efforts to interfere with the finality of the federal court's orders in these related cases will not be tolerated.

The judgment of the district court is **AFFIRMED**.

---

* Circuit Judge of the 6th Circuit, sitting by designation.

** Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

APPENDIX 2

91-18878

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CULLEN CENTER BANK & TRUST, Plaintiff,	§	CIVIL ACTION H-94-3007
versus	§	
EDUARDO P. LENTINO, *et al.*, Defendants.	§	

ORDER TO REMAND

(Filed Feb. 3, 1995)

The removal having been an abusive misuse of the bankruptcy system, this case is remanded to the 269th Judicial District Court of Texas, Harris County (#4).

Signed January 25, 1995, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

[Envelope]
[Post Office Stamp – Feb. 2, 1995]

CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
POST OFFICE BOX 61010
HOUSTON, TEXAS 77208

OFFICIAL BUSINESS
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Katherine Tyra
269th JDC of Harris County
301 Fannin Room 400
Houston, Tx 77002

CERTIFIED MAIL
P 714 717 285

STATE OF TEXAS
COUNTY OF HARRIS

I, Charles Bacarisse, District Clerk of Harris County, Texas, do hereby certify that the foregoing data is a true and correct copy of the original record, now in my lawful orderly and possession as appears of record in my office.

a) filed on 2/3/95

b) recorded under Vol. ___ Judge ___ in the minutes of said court

c) abstracted from the file record in my lawful possession electronically stored in digital form and

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APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

IN RE JORGE A. LENTINO, EDUARDO P. LENTINO, MARTA LENTINO, Debtors.	§ § § § §	CIVIL ACTION H-97-498

Order

(Entered May 13, 1998)

1. The automatic stay is lifted for Cullen Center to sue on the debt.

2. The counter-claim in usury is by the estate; no automatic stay existed.

Signed at Houston, Texas, on May 12, 1998.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX 4

NO. 1999-09390

SUSANA RAQUEL SCHAFER MICHELLE MARIE LENTINO FABIOLA VANESA LENTINO NATALIA LENTINO, CYNTHIA VICTORIA LENTINO, MARIA RAQUEL LENTINO, MARTA LENTINO, THE EDUARDO P. LENTINO CHILDREN LIVING TRUST,	§	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS
Plaintiffs,	§	281ST JUDICIAL DISTRICT
v.	§	
FROST NATIONAL BANK F/K/A CULLEN CENTER BANK AND TRUST	§	
Defendant	§	

ORDER

(Filed Jan. 29, 2001)

ON THIS DAY, came to be heard Plaintiffs' Unopposed Motion for Preferential Trial Seting and the Court after considering the evidence on file and the arguments of counsel is of the opinion that the motion should be GRANTED, therefore, it is

ORDERED, that this cause is hereby set for Preferential Trial Setting on June 19th, 2001.

February 9, 2001
DATE

/s/ Jane Bland
JUDGE PRESIDING

APPENDIX 5

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

In Re	§	
	§	
JORGE A. LENTINO and	§	
EDUARDO P. LENTINO,	§	CIVIL ACTION H-97-498
	§	
Debtors.	§	

Order

(Entered Aug. 10, 2000)

On behalf of herself, her husband, and her brother-in-law, Marta Lentino must follow the instructions of the Honorable Jane Bland in the 281st Judicial District of Harris County. Ms. Lentino is to act promptly, completely, and cheerfully. (391) (401)

Signed August 10, 2000, at Houston, Texas.

/s/ Lynn N. Hughes
United States District
Judge

APPENDIX 6

BUCKLEY, MATHEWS, WHITE & HOWELL, L.L.P.
A REGISTERED UNITED LIABILITY PARTNERSHIP®
INCLUDING PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2401 Fountainview

Suite 1000

Houston, Texas 77057

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RICHARD T. HOWELL, JR

April 17, 2001

394

Ms. Theresa Mobley
CAGE, HILL & NIEHAUS
5851 San Felipe, Suite 950
Houston, Texas 77057

Via Hand Delivery **145420**

Re: C.A. No.: H-97-498; *In Re Jorge Lentino, Eduardo P. Lentino*; In the United States District Court for the Southern District of Texas

Dear Ms. Mobley:

I am writing this letter to you to inform you of what I believe is the intent by Marta A. Lentino and Dov Avri Kaminetzky to once again exercise control over assets that are part of the bankruptcy estate in violation of Judge Hughes' preclusion order and in violation of the spirit, if not the letter, of Judge Hughes' judgment on title signed June 13, 1997. A true and correct copy of the judgment of

title is attached hereto and incorporated herein for all purposes as **Exhibit "1."** The judgment states that "title to all of the legal and equitable interests of these entities vested in the debtors' bankruptcy estates when the debtors filed their voluntary petitions for relief; E.L. York Plaza Living Trust and J.L. Living Trust."

Susana Raquel Schafer, Michelle Marie Lentino, Fabiola Vanessa Lentino, Natalia Lentino, Cynthia Victoria Lentino, Maria Raquel Lentino, Marta Lentino, and the Eduardo P. Lentino Children's Living Trust have filed a lawsuit against Cullen Center Bank and Trust for wrongful execution, statutory cause of action under Texas Civil Practice and Remedies Code §§34.021 and 34.022, common law cause of action for wrongful levy, common law cause of action for replevy, common law cause of action for malicious prosecution, common law cause of action for conversion, and common law cause of action for abuse of process in Cause No. 1999-09390 in the 281st Judicial District Court of Harris County, Texas. Dov Avni Kaminetzky has intervened even though he previously represented to Judge Hughes he had abandoned all his claims. A copy of Plaintiffs' Original Petition and Dov Avni Kaminetzky's plea in intervention are attached hereto and incorporated herein as **Exhibits "2"** and **"3."** In summary, the plaintiffs' claim that when Frost National Bank executed on the judgment it originally received in Cause No. 91-18878; *Cullen Center Bank and Trust vs. Eduardo P. Lentino, Jorge A. Lentino and Marta A. Lentino*; In the 269th Judicial District Court of Harris County, Texas, such action was wrong since the case was later reversed by the Fourteenth Court of Appeals. Furthermore, the plaintiffs and Dov Avni Kaminetzky claim they own the assets of the trusts.

Despite the obvious statute of limitations problems, this entire action was tried before Judge Hughes previously. Unfortunately, Judge Hughes' judgment states the debtors' legal and equitable interests vested when the debtors filed their voluntary petitions for relief on August 24, 1994. Plaintiffs and Dov Avni Kaminetzky are arguing they owned the assets on May 26, 1994. It is crystal clear that during the trial that Judge Hughes ruled these two trusts were self-settled discretionary trusts. In fact, Judge Hughes stated "the trusts are entirely illusory; the limited partnership apparently is illusory. These are all tissue guises for the doctors." Therefore, if we could have Judge Hughes amend the judgment on title or clarify the judgment on title to state that any assets in the self settled discretionary trusts always belonged to Eduardo P. Lentino and Jorge A. Lentino, we could end more needless litigation. In the alternative, if it is brought to Judge Hughes' attention that Marta A. Lentino and Dov Avni Kaminetzky sued Frost National Bank f/k/a Cullen Center Bank and Trust for these causes of action in violation of the preclusion order, Judge Hughes may decide to enforce his preclusion order. A true and correct copy of the preclusion order is attached and incorporated herein as **Exhibit "4."** I represented to Judge Blank that I would request Judge Hughes clarify his order since the Lentinos and Dov Avni Kaminetzky always argue the opposite of anything I say.

As you can well imagine, the lawsuit has spiraled out of control with Marta A. Lentino being pro se. The remainder of the plaintiffs are represented by Willard P. Conrad. Dov Avni Kaminetzky is also pro se and the plaintiffs' expert. Plaintiffs are alleging $82,500,000.00 in damages. We have spent in excess of $40,000.00 in fees

and expenses defending this matter. We have had to defend numerous arguments which are baseless in both fact and law including, but not limited to, Frost National Bank has no standing in this lawsuit as a defendant because one of Dov Avni Kaminetzky's corporations has a d/b/a for Cullen Center Bank and Trust, I am not authorized to represent Frost National Bank and the list goes on and on and on. I would appreciate whatever action you feel is appropriate to bring Ms. Lentino and Dov Avni Kaminetzky's action to Judge Hughes' attention.

Should you have any questions regarding this or any other matter, please do not hesitate to contact the undersigned.

Sincerely,
/s/ Richard T. Howell, Jr.
Richard T. Howell, Jr.

RTH/lh

E:\DATA\Howell\394\CORRESPO\Mobley.wpd

APPENDIX 7

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

In Re:	§	
	§	
JORGE A. LENTINO and EDUARDO P. LENTINO,	§	CIVIL ACTION H-97-498
	§	
Debtors.	§	

Amended Judgment on Title

(Entered June 14, 2001)

1. This order clarifies the one dated June 13, 1997 (37).

2. Title to the legal and equitable interests in these properties vested in the debtors' bankruptcy estates on August 24, 1994, when the debtors filed their voluntary petitions for relief:

   A. Lentino Family Limited Partnership and all its right, title, or interest held or claimed by the partnership;

   B. E.L. York Plaza Living Trust including Tract 32 of the Replat of Woodsdale Section Two, a subdivision in Harris County, Texas;

   C. J. L. York Living Trust including Tract 32 of the Replat of Woodsdale Section Two, a subdivision in Harris County, Texas;

   D. Eduardo P. Lentino Children's Trust including:

      (1) 12800 Briar Forest, Number 135, Houston, Texas 77077; the Stonehenge tract of 0.1136 acre or 4,950 square feet in William Hardin Survey, A-24, part of Block Two of

Reserve C, Volume 219, Page 88, of the Harris County Map Records, and

(2) 23 Ashford Forest, Houston, Texas 77079; Lot Six, Block One, of Ashford Forest Section One, Volume 117, Page 6, Harris County Map Records;

3. Title to 100% of the stock in these corporations vested in the debtors' bankruptcy estates on August 24, 1994, when the debtors filed their voluntary petitions for relief:

Hospital Associates International, Inc. (formerly known as Lentino Hospital Associates, Inc.);
Lentino Surgical Associates, P.A. (also known as Lentino Surgical Associates, Inc.);
Little York Hospital, Inc.;
North Houston Energy, Inc.;
Plaza Life and Energy, Inc. (also known as Lamez Corporation);
Plaza Medical Group, P.A.;
Plaza Oil & Gas, Inc.;
Plaza Pipeline Company, Inc. (also known as Plaza Pipeline, Inc.);
Texas Trinity Energy Co., Inc.;
York Plaza Real Estate, Inc. (also known as York Plaza Hospital and Medical Center);
York Plaza Hospital and Medical Center, Inc.;
Plaza Cardiopulmonary Associates (also known as Plaza Interpretation, P.A.);
Plaza Life, Ltd. (also known as Plaza Court and as Plaza C.T., Ltd.);

York Plaza Professional Building, Inc. (also known as York Plaza Professional Building, Inc.); and
Baires, Inc.

4. The bankruptcy estate acquired all causes of action, counter-claims, and claims held by the debtors and held by the entities they owned as they are listed in this order if they arose before August 24, 1994.

5. Title and possession of these assets – free and clear – vested in Pro Care of Houston, L.L.C., on January 14, 1997, when the trustee delivered a special warranty deed and bill of sale:

   A. All of the equity interest in:
   Hospital Associates International, Inc.,
   Plaza Life and Energy, Inc.,
   York Plaza Hospital and Medical Center, Inc.,
   York Plaza Real Estate, Inc.,
   Little York Hospital, Inc., and
   Baires, Inc.

   B. All of the interest in and all properties held, owned, or claimed by:
   Lentino Surgical Associates, P.A.,
   Lentino Family Limited Partnership,
   E. L. York Plaza Living Trust, and
   J. L. York Plaza Living Trust.

Signed June 9, 2001, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX 8

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

IN RE JORGE A. LENTINO,	§	CIVIL ACTION H-97-498

IN RE	§	
JORGE A. LENTINO,	§	CIVIL ACTION H-97-500
EDUARDO P. LENTINO,	§	H-97-745
MARTA LENTINO,	§	H-97-914
Debtors.	§	H-97-915
	§	H-97-922
	§	H-97-1155

Judgment on Title

(Entered June 16, 1997)

1. Title to all of the legal and equitable interests of these entities vested in the debtors' bankruptcy estates when the debtors filed their voluntary petitions for relief:

Hospital Associates International, Inc. (formerly known as Lentino Hospital Associates, Inc.);
Lentino Surgical Associates, P.A. (also known as Lentino Surgical Associates, Inc.); Little York Hospital, Inc.;
North Houston Energy, Inc.;
Plaza Life and Energy, Inc. (also known as Lamez Corporation);
Plaza Medical Group, P.A.;
Plaza Oil & Gas, Inc.;
Plaza Pipeline Company, Inc. (also known as Plaza Pipeline, Inc.);
Texas Trinity Energy Co., Inc.;

York Plaza Real Estate, Inc. (also known as York Plaza Hospital and Medical Center);
York Plaza Hospital and Medical Center, Inc.;
Plaza Cardiopulmonary Associates (also known as Plaza Interpretation, P.A.);
Plaza Life, Ltd. (also known as Plaza Court and as Plaza C.T., Ltd.);
York Plaza Professional Building, Inc. (also known as York Plaza Professional Building, Inc.);
Baires, Inc.;
Lentino Family Limited Partnership;
E. L. York Plaza Living Trust; and
J. L. Living Trust,

See 11 U.S.C. § 541.

2. Title and possession of the legal and equitable interests in these entitles vested in Pro Care of Houston, L.L.C., on January 14, 1997, when the trustee executed and delivered a special warranty deed and bill of sale:

Hospital Associates International, Inc.;
Plaza Life and Energy, Inc.;
York Plaza Hospital and Medical Center, Inc.;
York Plaza Real Estate, Inc.,
Little York Hospital, Inc.,
Lentino Family Limited Partnership,
J. L. York Plaza Living Trust,
E. L. York Plaza Living Trust; and
Baires, Inc.,

This includes real and personal property used by them in the operation of Northside General Hospital (formerly known as York Plaza Hospital).

Signed June 13, 1997, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX 9

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

In Re:	§	
	§	
JORGE A. LENTINO and	§	
EDUARDO P. LENTINO,	§	Civil Action H-97-498
	§	
Debtors.	§	

Order

(Entered June 14, 2001)

The assets that are the basis of the plaintiffs' claims and the claims made by them in Cause No. 99-09390, *Susana Raquel Schafer, Michelle Marie Lentino, Fabiola Vanessa Lentino, Natalia Lentino, Cynthia Victoria Lentino, Maria Raquel Lentino, Maria Lentino, and The Eduardo P. Lentino Children's Living Trust vs. Frost National Bank formerly known as Cullen Center Bank & Trust*, in the 281st Judicial District Court of Harris County, Texas, all were assets that were administered in the bankruptcy estates of Eduardo P. Lentino and Jorge A. Lentino, precluding claims by these parties to compensation arising from the pre-bankruptcy and bankruptcy handling of those properties, except for actions to reopen or to appeal the decisions in the federal proceeding.

Signed June 9, 2001, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX 10

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	*	CASE NO. 94-45735-H2-7
EDUARDO P. LENTINO, M.D.,	*	(Chapter 7)
DEBTOR	*	

NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION OF PROPERTY

(Filed March 1, 1995)

NOTICE PURSUANT TO LOCAL RULE 9013

IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING AND YOU MUST RESPOND SPECIFICALLY TO EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS FROM THE DATE YOU WERE SERVED AND GIVE A COPY TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE THE COURT MAY THREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF.

IF A PARTY REQUESTS EMERGENCY CONSIDERATION, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT

ALLOWS A SHORTER RESPONSE TIME THAN TWENTY DAYS, YOU MUST RESPOND WITHIN THAT TIME. IF THE COURT SETS AN EMERGENCY HEARING BEFORE THE RESPONSE TIME WILL EXPIRE, ONLY ATTENDANCE AT THE HEARING IS NECESSARY TO PRESERVE YOUR RIGHTS. IF AN EMERGENCY HEARING IS NOT SET, YOU MUST RESPOND BEFORE THE RESPONSE TIME EXPIRES.

You are hereby notified that the Trustee of the above-captioned estate intends to abandon property of the estate not less than twenty (20) days from the date hereof. This notice shall serve as the Trustee's Application to Abandon Property of the Estate. The property which is to be abandoned is described as follows:

Lot Six (6), Block One (1), of Ashford Forest, Section One (1), a subdivision in Harris County, Texas, according to the map thereof recorded in Volume 117, Page 6, Map Records of Harris County, Texas, also known as 523 Ashford Forest Drive; and

A tract of land containing 0.1136 acre (4,950 square feet) located in the William Hardin Survey, A-24, Harris County, Texas, being a part of Block Two (2), Reserve "C" of Stonehenge, a subdivision recorded in Volume 219, Page 88 of the Map Records of Harris County, Texas, also known as 12800 Briar Forest Drive, Unit No. 135, and also more particularly described in a certain deed dated November 29, 1977, filed in the Official Public Records of Real Property of Harris County, Texas, under Clerk's File No. F498837, and a certain deed of

trust filed in said records under Clerk's File No. F399403.

Said property is to be abandoned for the reason that such property is burdensome or is of inconsequential value to the estate, pursuant to 11 U.S.C. Section 554(a), as the Real Property Records reflect final judgment liens and federal tax liens in an aggregate amount exceeding $599,000.00, in addition to indebtedness secured by deed of trust liens on the property.

DATED: February 28, 1995.

Respectfully submitted,

/s/ Gregory A. Ostendorf
GREGORY A. OSTENDORF
State Bar No. 15337500

OF COUNSEL:

CAGE, HILL & NIEHAUS, L.L.P.
5851 San Felipe, Suite 950
Houston, Texas 77057
Telephone (713) 789-0500
Telecopier (713) 974-0344
ATTORNEYS FOR LOWELL T.
CAGE, TRUSTEE

DECLARATION OF TRANSMITTAL TO UNITED STATES TRUSTEE

On February 28, 1994, the foregoing was transmitted to the United States Trustee, via United States mail, postage prepaid, properly addressed to be delivered at 440 Louisiana, Suite 2500, Houston, Texas 77002.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Gregory A. Ostendorf
GREGORY A. OSTENDORF

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February, 1995, pursuant to Local Bankruptcy Rules 2002 and 9013, a true and correct copy of the attached Notice to Abandon Property was served via United States mail, postage prepaid, upon the Debtor, Debtor's counsel, and all creditors and entities listed on the attached service list.

/s/ Gregory A. Ostendorf
GREGORY A. OSTENDORF

APPENDIX 11

CAGE, HILL & NIEHAUS, L.L.P.
ATTORNEYS AT LAW
5851 SAN FELIPE, SUITE 950
HOUSTON, TEXAS 77057
TELEPHONE: (713) 789-0500
TELECOPIER: (713) 974-0344

[Names And Addresses Omitted In Printing]

May 11, 1995

Ms. Afton Izen
Izen & Associates, P.C.
5222 Spruce Street
Bellaire, Texas 77401

Re: Eduardo Lentino, Debtor; Chapter 7;
Case No. 94-45735-H2-7; and
Jorge Lentino, Debtor; Chapter 7;
Case No. 94-45736-H5-7

Dear Afton:

This letter is in reply to your May 5 communication requesting a statement from me regarding the rights of Mr. and Mrs. Lentino relative to the Ashford Forest and Briar Forest properties.

Those properties have been abandoned by me. Once abandoned, the properties vest back in the debtor in the same manner that they were held prior to bankruptcy. Accordingly, the Lentinos are free to collect the rents and otherwise maintain the properties. The properties remain subject to all indebtedness that existed on the date of filing.

Should you have any further questions, do not hesitate contacting me.

Sincerely,

/s/ Lowell T. Cage
LOWELL T. CAGE

LTC/ns

APPENDIX 12

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20184

In The Matter Of: JORGE A LENTINO, MD
Debtor

MARTA A LENTINO
Appellant

v.

LOWELL T CAGE, Trustee
Appellee

****

In The Matter Of: EDUARDO P LENTINO, MD
Debtor

MARTA A LENTINO
Appellant

v.

LOWELL T CAGE, Trustee
Appellee

Appeal from the United States District Court for the Southern District of Texas, Houston

---

(Filed Aug. 4, 1999)

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of Appellee to dismiss the appeal for lack of jurisdiction is granted. The Clerk of the district court will correct the error in the caption of the case, conceded by all.

IT IS FURTHER ORDERED that Appellee's alternative motion for an extension of time to file his brief is denied as moot.

APPENDIX 13

NO. 91-18878

CULLEN CENTER BANK & TRUST, n/k/a FROST NATIONAL BANK,	§	IN THE DISTRICT COURT
Plaintiff,	§	
V.	§	HARRIS COUNTY, TEXAS
EDUARDO P. LENTINO, M.D., JORGE A. LENTINO, M.D., and MARTA A. LENTINO,	§	
Defendants.	§	281st JUDICIAL DISTRICT

ORDER OF SEVERANCE

(Filed Feb. 29, 2000)

On February 29, 2000, the Court signed a Post Answer Default Judgment and Final Order of Severance in favor of Plaintiff, Frost National Bank, National Banking Association, successor to Cullen Center Bank & Trust, as to its claims against Defendants Eduardo P. Lentino, M.D., Jorge A. Lentino, M.D. and Marta A. Lentino, accordingly:

It is ORDERED that all of Plaintiff's claims against those Defendants, and those Defendants' counterclaim against Plaintiff, and those Defendants' affirmative defenses, are all severed from Cause No. 91-18878, and the Clerk of the 281st Judicial District Court of Texas is ordered to docket a new Cause No. 91-18878-A as a result of this severance.

It is further ORDERED that the Clerk of the 281st Judicial District Court of Texas is to copy the following documents and include them in the file of Severed Cause No. 91-18878-A:

	DATE	DOCUMENT
1.	05/03/91	Plaintiff's Original Petition
2.	05/13/91	Officer's Return of Service Upon Defendants Eduardo P. Lentino, M.D., Jorge A. Lentino, M.D. and Marta A. Lentino
3.	05/30/91	Defendants' Eduardo P. Lentino, M.D., Jorge A. Lentino, M.D. and Marta A. Lentino Original Answers
4.	03/13/92	Defendants' Counterclaim
5.	08/21/93	Defendants' Fourth Amended Answer, Special Exceptions and Counterclaims
6.	10/25/93	Defendants' Trial Time Amendment to their Fourth Amendment Answer, Special Exceptions and Counterclaims
7.	11/05/99	Defendant Marta Lentino's Supplemental Answer to Plaintiff's Fifth Amended Original Petition
8.	12/15/99	Defendants Eduardo Lentino, M.D. and Jorge Lentino, M.D.'s Supplemental Answer to Plaintiff's Fifth Amended Original Petition
9.	01/20/00	Frost National Bank's Supplemental Responses to Defendants Eduardo Lentino, Jorge Lentino and Marta Lentino's Rule 194 Request for Disclosure

10. 01/21/00 Plaintiff's Seventh Amended Original Petition

11. 02/13/00 Defendants' Eduardo Lentino, M.D. and Jorge Lentino, M.D.'s Supplemental Answer to Plaintiff's Seventh Amended Original Petition and Special Exceptions

12. 02/14/00 Defendant Marta Lentino's Supplemental Answer to Plaintiff's Seventh Amended Original Petition and Special Exceptions

13. 02/29/00 Post Answer Default Judgment and Final Order of Severance signed by the Honorable Jane Bland

14. 02/29/00 Order of Severance

15. Docket Sheet in this matter.

SIGNED on February 29, 2000.

/s/ Jane Bland
JANE BLAND, Judge
281st Judicial District

CAUSE NO. 91-18878

CULLEN CENTER BANK & TRUST	§	IN THE DISTRICT COURT
vs.	§	OF HARRIS COUNTY, TEXAS
EDUARDO P. LENTINO, ET AL	§	281ST JUDICIAL DISTRICT

POST-ANSWER DEFAULT JUDGMENT AND FINAL ORDER OF SEVERANCE

On February 21, 2000, the Court called the captioned cause for trial, pursuant to a trial setting with proper notice to all parties. Plaintiff, Frost National Bank, National Banking Association, successor to Cullen Center Bank & Trust, appeared by its duly authorized representative and its counsel of record. Defendants Eduardo P. Lentino, M.D. and Jorge A. Lentino, M.D. appeared by counsel of record; Defendant Marta A. Lentino appeared personally and pro se announcing that she had terminated her counsel of record; and Intervenor Lowell T. Cage in his capacity as Bankruptcy Trustee appeared in person and by counsel of record. On motion made by counsel of record and heard in open court, the Court then excused counsel of record from further representation of Marta A. Lentino. All parties proceeded to present pretrial motions and conducted other pretrial proceedings before the Court prepatory to the call of a jury panel which the Court announced for 10:00 a.m., February 22, 2000. The Court further announced that the Court would reconvene at 9:00 a.m. February 22, 2000 to complete any remaining pretrial matters prior to jury selection. Whereupon, the court recessed.

At 9:00 a.m., February 22, 2000, the Court reconvened. Whereupon the Court received a written notification from Eduardo P. Lentino, Jorge A. Lentino, M.D. and Marta A. Lentino that they . . . and this judgment is to be entered in the Court minutes of the 281st Judicial District Court of Texas in severed Cause No. 91-18878-A as the Final Judgment of this Court between Frost National Bank, National Banking Association, successor to Cullen Center Bank & Trust, as Plaintiff, and Eduardo P. Lentino,

M.D., Jorge A. Lentino, M.D., and Marta A. Lentino, as Defendants. The claims, counterclaims, denials and defenses by and between plaintiff and intervenor remain pending in the assigned cause No. 91-18878.

Any and all further relief sought by or between Frost National Bank, National Banking Association, successor to Cullen Center Bank & Trust, Plaintiff, and Eduardo P. Lentino, M.D., Jorge A. Lentino, M.D., and Marta A. Lentino, Defendants, is denied.

It is further ORDERED that Plaintiff have execution and all writs for the enforcement and satisfaction of this judgment for which such writs shall issue.

It is further ORDERED that none of the terms of this Judgment in ~~this~~ Severed Cause No. 91-18878-A shall have any effect whatsoever upon the Bankruptcy Estate of Eduardo P. Lentino, M.D. or the Bankruptcy Estate of Jorge A. Lentino, M.D., except to the extent that this Judgment forms the basis in whole or in part of claims by Frost National Bank, National Banking Association, successor to Cullen Center Bank & Trust within the respective bankruptcy estates.

SIGNED February 29, 2000, at 9:37 o'clock A.M. ~~p~~.m.

/s/ Jane Bland
JANE BLAND
281st District Judge

APPENDIX 14

UNITED STATES DISTRICT COURT	SOUTHERN DISTRICT OF TEXAS

In Re:	§	
Jorge A. Lentino and Eduardo P. Lentino	§ § §	CIVIL ACTION H-97-498

Order Setting Hearing

1. A hearing will be held before Judge Lynn N. Hughes on:

May 24, 2001
at 1:30 p.m.
Courtroom 11-C, Eleventh Floor
United States Court House
515 Rusk Avenue
Houston, Texas 77002

2. To insure full notice, each party who receives this notice must send a copy of it to every other party even if they may have been sent one by the court.

3. Each party must appear by an attorney with (a) full knowledge of the facts and (b) authority to bind the client.

4. The court will decide motions, narrow issues, inquire about expected motions, and schedule discovery. Counsel are to consult among themselves about these matters well in advance. *See* Fed. R. Civ. P. 16.

Signed on May 1, 2001, at Houston, Texas.

/s/ Lynn N. Hughes
Lynn N. Hughes
United States District Judge

APPENDIX 15

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01-20781

In The Matter Of: JORGE A LENTINO, MD; EDUARDO P LENTINO, MD

Debtors

SUSANA RAQUEL SHAFER, individually and as assignee of the beneficial interest of the Individual Estate of George Salvador Lentino; FABIOLA VANESA LENTINO; MICHELLE MARIE LENTINO; NATALIE LENTINO; CYNTHIA VICTORIA LENTINO, individually and as assignee of the beneficial interest of the Individual Estate of George Salvador Lentino; MARTA A LENTINO, individually and as Trustee of the Eduardo P Lentino Children's Trust; THE EDUARDO P LENTINO CHILDREN'S TRUST; MARIA RAQUEL LENTINO

Appellants

v.

LOWELL T CAGE, Trustee

Appellee

In The Matter Of: EDUARDO P LENTINO, MD, also known as Eduardo Pedro Lentino, also known as E P Lention; JORGE A LENTINO, MD

Debtors

LOWELL T CAGE, Trustee

Appellee

v.

SUSANA RAQUEL SHAFER, individually and as assignee of the beneficial interest of the Individual Estate of George Salvador Lentino; FABIOLA VANESA LENTINO; MICHELLE MARIE LENTINO; NATALIE LENTINO; CYNTHIA VICTORIA LENTINO, individually and as assignee of the beneficial interest of the Individual Estate of George Salvador Lentino; MARTA A LENTINO, individually and as Trustee of the Eduardo P Lentino Children's Trust; THE EDUARDO P LENTINO CHILDREN'S TRUST; MARIA RAQUEL LENTINO

Appellants

Appeal from the United States District Court for the Southern District of Texas, Houston

---

ON PETITION FOR REHEARING

(Filed Dec. 27, 2002)

Before JONES, SMITH, and SILER*, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied.

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* Circuit Judge of the 6th Circuit, sitting by designation.

ENTERED FOR THE COURT:

/s/ Edith H. Jones
United States Circuit Judge

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE

APPENDIX 16

11 U.S.C. § 554. Abandonment of property of the estate

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

* * *

---

28 U.S.C. 1452. Removal of claims related to bankruptcy cases

* * *

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand,

Is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

---

28 U.S.C. § 1447. Procedure after removal generally

* * *

(c) A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears

that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

* * *

(As amended Oct. 1, 1996, Pub.L. 104-219, § 1, 110 Stat. 3022.)

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

---

28 U.S.C. § 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

(June 25, 1948, c. 646, 62 Stat. 968.)

Fed. R. Civ. P.
RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

* * *

(e) Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

[Amended December 27, 1946, effective March 19, 1948; February 28, 1966, effective July 1, 1966; April 27, 1995, effective December 1, 1995.]

Fed. R. Civ. P.
RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed

in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

* * *

Fed. R. Civ. P.

RULE 603. OATH OR AFFIRMATION

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

---

(2)

No. 02-1439

Supreme Court, U.S.
FILED
APR 28 2003
CLERK

IN THE

Supreme Court of the United States

CHRISTINE A. CUMMINGS, *et al.*,
Petitioners,

v.

KATHLEEN CONNELL; MARTY MORGENSTERN; AND CALIFORNIA STATE EMPLOYEES ASSOCIATION, LOCAL 1000, SEIU, AFL-CIO, CLC,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT MORGENSTERN'S BRIEF IN OPPOSITION

HOWARD SCHWARTZ
Chief Counsel
LINDA D. BUZZINI
Deputy Chief Counsel
WARREN C. STRACENER *
Assistant Chief Counsel
DEPARTMENT OF PERSONNEL ADMINISTRATION
STATE OF CALIFORNIA
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814-7243
(916) 324-0512

* Counsel of Record

Attorneys for Marty Morgenstern

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

5 pp

IN THE

Supreme Court of the United States

CHRISTINE A. CUMMINGS, *et al.*,
Petitioners,

v.

KATHLEEN CONNELL; MARTY MORGENSTERN; AND CALIFORNIA STATE EMPLOYEES ASSOCIATION, LOCAL 1000, SEIU, AFL-CIO, CLC,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

RESPONDENT MORGENSTERN'S BRIEF IN OPPOSITION

ARGUMENT

Introduction

The Petition should be denied because it presents no important issue which requires the attention of this Court. Moreover, the Petition fails to identify a *bona fide* conflict in the law between the circuits or between the Court of Appeals' decision and a decision of this Court.

This Court recently denied a Petition for Writ of *Certiorari* from a decision of the Ninth Circuit filed by the same counsel from the National Right to Work Legal Foundation, Inc. (hereinafter "Right to Work") who represents Petitioners here, raising the second and third questions that Petitioners seek to raise here. See *Prescott v. County of El Dorado*, __ U.S. __, 123 S.Ct. 1251 [154 L.Ed.2d 1019] (2003). Prior to

that, this Court denied a Petition for Writ of *Certiorari* from another decision of the Ninth Circuit filed by Right to Work raising the first question that Petitioners seek to raise here. See *Foster v. Garcy*, 535 U.S. 1112, 122 S.Ct. 2327 [153 L.Ed.2d 159] (2002). For the same reasons that the Court denied the petitions in *Prescott* and *Foster*, it should deny the Petition here.

I. THIS COURT SHOULD DENY THE PETITION FOR THE SAME REASONS THAT IT RECENTLY DID SO IN *PRESCOTT* AND *FOSTER* REGARDING THE ISSUES OF PUBLIC EMPLOYER LIABILITY, FEE PAYERS' STANDING TO CHALLENGE THE FAIR SHARE FEE INDEMNIFICATION AGREEMENT, AND THE CONSTITUTIONALITY OF THE INDEMNIFICATION AGREEMENT.

Respondent, Marty Morgenstern, is the Director of the Department of Personnel Administration, a department within the executive branch of state government for the State of California.

In their first three Questions Presented, Petitioners seek *certiorari* on the following issues: (1) the liability of public officials for collecting fair share fees under a legally deficient Hudson notice; (2) the standing of fee payers to challenge an agreement whereby the union agrees to indemnify the public employer against claims arising from the collection of fair share fees; and (3) the constitutionality of such an indemnification agreement. (Petn. at p. i.) Petitioners in *Prescott v. County of El Dorado*, ___ U.S. ___, 123 S.Ct. 1251 (February 24, 2003), represented by the same Right to Work counsel who represents Petitioners in the instant case, sought to raise the second and third of those issues before this Court. The Court, however, denied their Petition for *Certiorari*, just two months ago. *Id.*

Prior to *Prescott*, Petitioners in *Foster v. Garcy*, 535 U.S. 1112, 122 S.Ct. 2327 (June 3, 2002), who were also represented by Right to Work counsel, sought to raise the first issue raised here, i.e., the liability of public officials for collecting fair share fees under a legally deficient Hudson notice. The Court, however, denied their Petition for *Certiorari*, less than one year ago. *Id.*

The Court of Appeals in the present case relied on its prior decision in *Foster v. Madhesian*, 268 F.3d 689 (9th Cir. 2001), cert. denied *sub nom Foster v. Garcy*, 122 S.Ct. 2327 (2002), for its holding that the defendant public officials cannot incur any liability under the facts of this case. (See Petn. App. A at 18a-19a.) Similarly, the Court of Appeals in the present case relied on its prior decision in *Prescott v. County of El Dorado*, 298 F.3d 844 (9th Cir. 2002), *cert. denied*, 123 S.Ct. 1251 (2003), for its holding that Petitioners lack standing to challenge the fair share fee indemnification clause. (See Petn. App. A at 21a.) These are the very decisions as to which this Court recently denied *certiorari*.

Nothing has changed since this Court denied a similar Petition for *Certiorari* on these same issues just two months ago. The Court of Appeals' decision merely applied precedents as to which this Court has already denied *certiorari*. There is no need here to repeat the arguments made by the respondents in *Foster* and *Prescott* as to why *certiorari* is not warranted. Rather, Respondent Morgenstern refers the Court to those arguments and respectfully requests that the Court deny the Petition in the present case as to the first three Questions Presented for the same reasons that it denied the similar petitions in *Prescott* and *Foster*.

CONCLUSION

Petitioners have failed to present an important issue which requires the Court's attention. Petitioners have also failed to identify a *bona fide* conflict between the circuits or between

the Court of Appeals' decision and a decision of this Court. The first three Questions Presented in the Petition have been previously considered and rejected by this Court for review. There is nothing unique in the facts or law governing the present case that merit further consideration by the Court. Accordingly, the Petition should be denied.

Respectfully submitted,

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